REMARKS

Claims 1-6, 8-14, and 16-25 remain pending in this application. Claims 7 and 15 have been cancelled. Claims 1, 4-6, 9, 12-14, 17, and 22 have been amended to further define the invention. No new matter has been introduced by this amendment.

Rejections under 35 USC 101

Claims 9-16 were rejected under 35 USC 101. Claim 9 has been amended to specify that the computer readable medium is a tangible computer readable medium. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Rejections under 35 USC 112

Claim 1, was rejected under 35 USC 112. In light of the amendments to claim 1 it should be clear which device is performing the functions questioned by the Examiner. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Rejections under 35 USC 102

Claims 1, 2, 4, 5, 8, 9, 10, 12, 13, and 16 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,560,243 issued to Mogul et al, hereinafter referred to as "Mogul." Applicants respectfully traverse these rejections because the cited art does not teach or suggest each and every feature of the claims, as amended. Applicants respectfully disagree with Examiner's discussion of bandwidth and wait time as detailed in paragraph 9 of the Office Action. The Examiner concludes that the server would have to wait half a second per transmission of each transmission packet. The time in between packets being sent out is related to the operating frequency of the server and the clock cycles and is not a wait time as discussed with regard to the present application. The wait time of the present application is in addition to what the Examiner refers to as the wait time. That is, when the server is sending out packets at a maximum rate, the wait time is zero under the present application (see paragraph 28). Accordingly, a wait time under the present application will be additive to what the Examiner refers to a wait time in order to accommodate devices having limited resources as explained in the background. Thus, the Examiner's interpretation is not consistent with the details of the application and the Applicant respectfully requests that the Examiner interpret the claims consistent with the specification.

Claim 1, as amended, includes the features of calculating a wait time at the second computing device based on a transfer rate provided to the second computing device by the first computing device, wherein the calculating includes dividing a data file portion size by the transfer rate prior to any transferring to the first computing device; and adjusting the wait time during the transferring of the data file based on periodic updates of the transfer rate provided by the first computing device to the second computing device. Mogul specifies that the flow of data is first received and then a determination of the bandwidth to be allocated to the server is made (see Figure 4 and column 9, lines 39-48). In contrast, claim 1 as amended, specifies that the calculating is performed prior to any transferring to the first computing device. Claims 9 and 17 have also been amended to specify that the calculating is performed prior to an transmission. Accordingly, Applicant respectfully requests that the rejection under 35 USC 102 be withdrawn for at least these reasons.

Rejections under 35 USC 103

Claims 3, 6, 7, 11, 14, 15, and 17 were rejected as being unpatentable over Mogul. In light of the amendments to independent claims 1, 9, and 17, Applicant respectfully requests that these rejection be withdrawn. As discussed above, Mogul requires that the receiving entity, i.e., the client, receive the flow prior to communicating the bandwidth allocation protocol to the sending entity, i.e., the server (see Figure 4). In addition, claims 1 and 9 have been amended to include the feature of calculating the wait time by dividing a data file portion size by the transfer rate. The Examiner states that it would have been obvious that the server must determine how long to wait between sending packets by dividing it by the rate in order to transfer packets at the target bandwidth for the benefit of allowing the receiving system to achieve its own bandwidth allocation policy. First of all, the bandwidth allocation policies discussed in Mogul are directed toward predetermined priority levels for data based on time sensitivity. Secondly, the Examiner provides no analysis whatsoever as to why it would be obvious to divide the packet size by the rate. The Examiner has provided mere conclusory statements without any articulated reasoning to support obviousness. The Examiner refers to column 1, lines 52-55, where it is generally stated that the receiving system (client) achieves its own bandwidth allocation policy among multiple sending sources sharing a communication link. The embodiments described in the present application are directed to first and second computing devices and not multiple sending sources. As mentioned above, a bandwidth allocation policy assigns priority levels. Furthermore, the Applicant requests that the Examiner articulate as to how it would be obvious to divide a block size by a transfer rate to determine a wait time prior to transmitting any data under Mogul, when Mogul specifies that the flow is sent to the receiver and then the receiver communicates the bandwidth control protocol after receiving the flow. Applicant respectfully asserts that there is nothing in Mogul that would suggest to one skilled in the art to divide a data portion size by a transfer rate to derive a wait time. Applicant would also like to point out that claims 6 and 14 have been amended to include the features of verifying whether the transfer rate is greater than zero; and setting the wait time to zero when the transfer rate is less than or equal to zero. Mogul neither discloses or suggests these features.

In view of the foregoing, Applicants respectfully submit that all of the pending claims are in condition for allowance. A notice of allowance is therefore respectfully requested. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach Applicant's attorney, Michael L. Gencarella (44,703) at 408-774-6921.

Respectfully submitted,

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